

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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PRESIDENT AND FELLOWS OF )  
HARVARD COLLEGE, *et al.*, )  
Plaintiffs, ) Civil Action No. 1:20-cv-11283-ADB  
v. )  
UNITED STATES DEPARTMENT OF )  
HOMELAND SECURITY, *et al.*, )  
Defendants. )  
\_\_\_\_\_  
)

**MOTION OF THE FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION, INC.  
FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Local Rule 7.1, the Foundation for Individual Rights in Education (“FIRE”) moves for leave to file an amicus curiae brief in support of Plaintiffs’ motion for a preliminary injunction. The proposed brief is attached as an exhibit to this motion. We have consulted counsel for Plaintiffs and counsel for Defendants regarding this motion. Plaintiffs consent, while Defendants take no position. The reasons for this motion are as follows.

FIRE is a nonpartisan, nonprofit organization dedicated to promoting and protecting civil liberties at our nation’s institutions of higher education. Since 1999, FIRE has worked to protect students’ First Amendment rights at campuses nationwide. FIRE has defended the freedom of expression and academic freedom of thousands of students and faculty members across the United States and, as American educational institutions increasingly expand to other nations, around the world. FIRE defends these fundamental rights—at both public and private institutions—through public commentary, advocacy to institutions of higher education, litigation

on behalf of students and faculty members whose rights are threatened, and participation as amicus curiae. *See, e.g., B.L. v. Mahanoy Area Sch. Dist.*, Docket No. 19-1842, 2020 U.S. App. LEXIS 20365, at \*21 (3d Cir. June 30, 2020) (citing with approval FIRE’s amicus curiae brief).

While Plaintiffs’ briefs and supporting declarations invoke the likely impact on individual students’ ability to access the internet, FIRE’s brief addresses the chilling effect on academic expression and academic freedom that will be cast on both the exiled students and the students and faculty who remain in the United States. The Supreme Court has recognized that “our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us” and “a special concern to the First Amendment,” in furtherance of avoiding government actions which “cast a pall of orthodoxy over the classroom.” *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967). ICE’s policy risks importing a “pall of orthodoxy” over American classrooms, as students exiled to foreign nations—where the First Amendment holds no currency, and where repressive state surveillance sharply limits freedom of expression and inquiry—will be subject to censorship. That foreseeable certainty will not only frustrate the foreign students’ ability to engage with their U.S.-based counterparts, but will discourage students and faculty within the United States from discussing subjects likely to result in foreign censorship or other harm to their exiled classmates.

This Court has discretion to permit the filing of amicus curiae briefs. *See, e.g., Massachusetts Food Ass’n v. Massachusetts Alcoholic Beverages Control Comm’n*, 197 F.3d 560, 568 (1st Cir. 1999) (district court “reasonably concluded” that “any variations of legal argument could adequately be presented in amicus briefs”); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 807 F.3d 472 (1st Cir. 2015) (affirming district court’s

order allowing filing of amicus brief in lieu of intervention). The Court has ordered that such briefs be filed by noon today. ECF No. 25.

For these reasons, FIRE requests that its motion for leave to file the attached amicus brief be granted.

Respectfully submitted,

FOUNDATION FOR INDIVIDUAL RIGHTS IN  
EDUCATION, INC.,

By its attorneys,

/s/ Jeffrey J. Pyle

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*Counsel of Record*

Dated: July 13, 2020

**STATEMENT PURSUANT TO LOCAL RULE 7.1**

Pursuant to Local Rule 7.1, I hereby state that on July 11 and 12, 2020, counsel for the Foundation for Individual Rights in Education, Inc. conferred in good faith with counsel for Plaintiffs and Defendants in an attempt to resolve or narrow the issues presented in this motion.

/s/ Jeffrey J. Pyle  
Jeffrey J. Pyle

**CERTIFICATE OF SERVICE**

I hereby certify that this document has been filed through the CM/ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Jeffrey J. Pyle  
Jeffrey J. Pyle